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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 73-2033

OCTOBER TERM, 1973

JOHN KUKLEVICH

and

RUTH KUKLEVICH,
Petitioners,

vs.

UNION LOCAL SCHOOL DISTRICT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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OPINION BELOW

The Supreme Court of Ohio wrote no opinion. The Court of Appeals for Belmont County, Ohio, Seventh Judicial District, rendered a written decision August 7, 1973, which is attached hereto as Appendix A; the opinion was not reported. The Court of Common Pleas of Belmont County, Ohio wrote no opinion.

JURISDICTION

On April 17, 1974, the Supreme Court of the State of Ohio dismissed Petitioners' appeal as having been improvidently allowed; the dismissal is attached hereto as Appendix B.

The jurisdiction of this court is invoked under Rule 19 of this Court and 28 U.S.C. 1257(3), which provides for review of final judgments rendered by the highest court of a state by certiorari " . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or Commission held or authority exercised under the United States."

QUESTIONS PRESENTED

1. Whether the method used to classify an agency of the State of Ohio as the State of Ohio for immunity from suit is violative of the right to Equal protection and due process under the Fourteenth Amendment to the Constitution of the United States.

2. Whether a school board in Ohio can be the State of Ohio for the purposes of immunity from suit.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of relevant constitutional and statutory provisions involved herein is contained in Appendix C, which is

attached hereto. The relevant provisions are:

> The Fourteenth Amendment to the Constitution of the United States. Article I, Section 16 of the Constitution of the State of Ohio. Section 3313.17 of the Ohio Revised Code. Section 3313.201 of the Ohio Revised Code.

STATEMENT OF THE CASE

Petitioner, John Kuklevich, together with a friend, attended a regularly scheduled interscholastic football game at the Union Local School District Athletic field, Morristown, Ohio on November 6, 1970. Petitioner paid admission to the game and proceeded to his seat in the bleachers whereupon the bleacher seats collapsed and Petitioner fell through and was caught at shoulder-level by the collapsed bleachers. Petitioner received serious injuries and subsequently filed suit, with Ruth Kuklevich, his wife, against the Union Local School District.

Respondent, Union Local School District, filed a motion to dismiss Petitioners' Complaint which was sustained by the Court of Common Pleas of Belmont County, Ohio on July 21, 1972. No opinion was rendered by the Common Pleas Court of Belmont County, but the dismissal was based upon the tort immunity of the State of Ohio.

The Petitioner appealed the dismissal to the Belmont County Court of Appeals, Seventh Judicial District; in a decision dated August 7, 1973, the Appeals Court

affirmed the Common Pleas Court. In its opinion the Appeals Court stated "it is the duty of the Ohio Legislature or the Supreme Court by stare decises to correct injustices or discriminations that may occur because of the doctrine of sovereign immunity."

Petitioner filed a notice of appeal to the Supreme Court of the State of Ohio on September 6, 1973. In the Memorandum in Support of Jurisdiction, the Petitioner raised the question of violation of the Fourteenth Amendment to the Constitution of the United States in the classification of the activities of a School Board and the protection of a School Board from suit. The Supreme Court of Ohio allowed the motion to certify on November 29, 1973. The Petitioner submitted a brief on appeal on January 14, 1974. On April 17, 1974, the Supreme Court of Ohio dismissed the Petitioners' Appeal as having been improvidently allowed. Petitioner maintains the method of classification of governmental agencies in Ohio as the State of Ohio is violative of Equal Protection and Due Process; Petitioner further has maintained that a School Board in Ohio is not, and cannot be, the State of Ohio.

Petitioner now requests that this Court exercise jurisdiction over this cause.

ARGUMENT

A. The method of classifying, by the judiciary, of inferior agencies of the State of Ohio as the State of Ohio for purposes of immunity from suit is violative of the Fourteenth Amendment to the Constitution of the United States.

The United States Supreme Court in Palmer et al vs The State of Ohio, 248 U.S. 32 (1918) dismissed an appeal which alleged that state immunity violated the Fifth Amendment to the Constitution of the United States. The basis of the dismissal was the Eleventh Amendment to the Constitution of the United States which says that the Judicial power of the Federal government will not "be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The question in the instant case is the manner in which the determination is made in Ohio that an instrumentality is the State of Ohio for purposes of immunity from suit. While suits have been permitted against inferior instrumentalities in limited circumstances, there has been a consistent, systematic discrimination against suits in tort.

The Ohio Constitution, Article I, Section 16 abolished immunity of the State of Ohio from suit:

> All Courts shall be open, and every person, for an injury done him in his land, goods, or person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.
>
> Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

The Ohio legislature has specifically provided through the Ohio Revised Code, Section 3313.17, that a School Board may sue and be sued:

> The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

In spite of the clear mandate of the Constitution of Ohio and the legislature, the Courts have devised an elaborate scheme for determining under what circumstances they will or will not permit suit against an inferior agency of the State of Ohio. It is the method of classification, and the absence of any standards for classification which have resulted in the violation of Due Process and Equal Protection of which Petitioner complains.

There have been a number of decisions in Ohio dealing with suits against Boards of Education but no consistent pattern established for determining when a School Board may be amenable to suit and when it may not be so. In Wayman vs Board of Education, Akron City School District, 5 Ohio St. 2d 248 (1966), the Supreme Court of Ohio said that a suit against the board is a suit against the government of the State of Ohio. In the very same opinion, however, the Court abrogated the immunity to permit a suit against the state in nuisance:

> The doctrine of governmental immunity shields the board of education from liability in damages. However, governmental ownership alone does not authorize the creation of a nuisance, and the board cannot by a positive act create a nuisance upon its property that endangers or damages another's property. (at page 251)

While the Court exempts actions in tort, it specifically permits actions in injunction against the very same government. Why can the distinction be made? Why is the creation of a nuisance more onerous than the injury of an innocent party?

The Ohio Supreme Court in Board of Education of Springfield City School District vs Gibson, 130 Ohio St. 318 (1935) stated the following in syllabus 1:

> 1. Immunity attaching to the State does not accrue to the benefit of a board of education or school district.

The case has never been specifically overruled in Ohio. It still stands as a clear indication of the confusion with which the determination is made whether or not an inferior governmental agency will be given the protection of immunity from suit. There has never been a standard set forth to make the determination. The Gibson case, supra, at page 7, is testimony that in Ohio the determination of immunity has often been made, for the same agencies, on a case by case basis.

The Gibson case, supra, at page 7, was modified in Brown vs Board of Education, Monroeville Local School District, 20 Ohio St. 2d 68 (1969); suits in tort were not authorized but suits in contract and actions based upon a Board of Education's right to hold land were permitted. The Court allowed a private litigant to take advantage of adverse possession against a School Board:

> A private litigant, in an action against a board of education of a local school district, can rely upon adverse possession to obtain title to land held in trust by that board for school purposes.

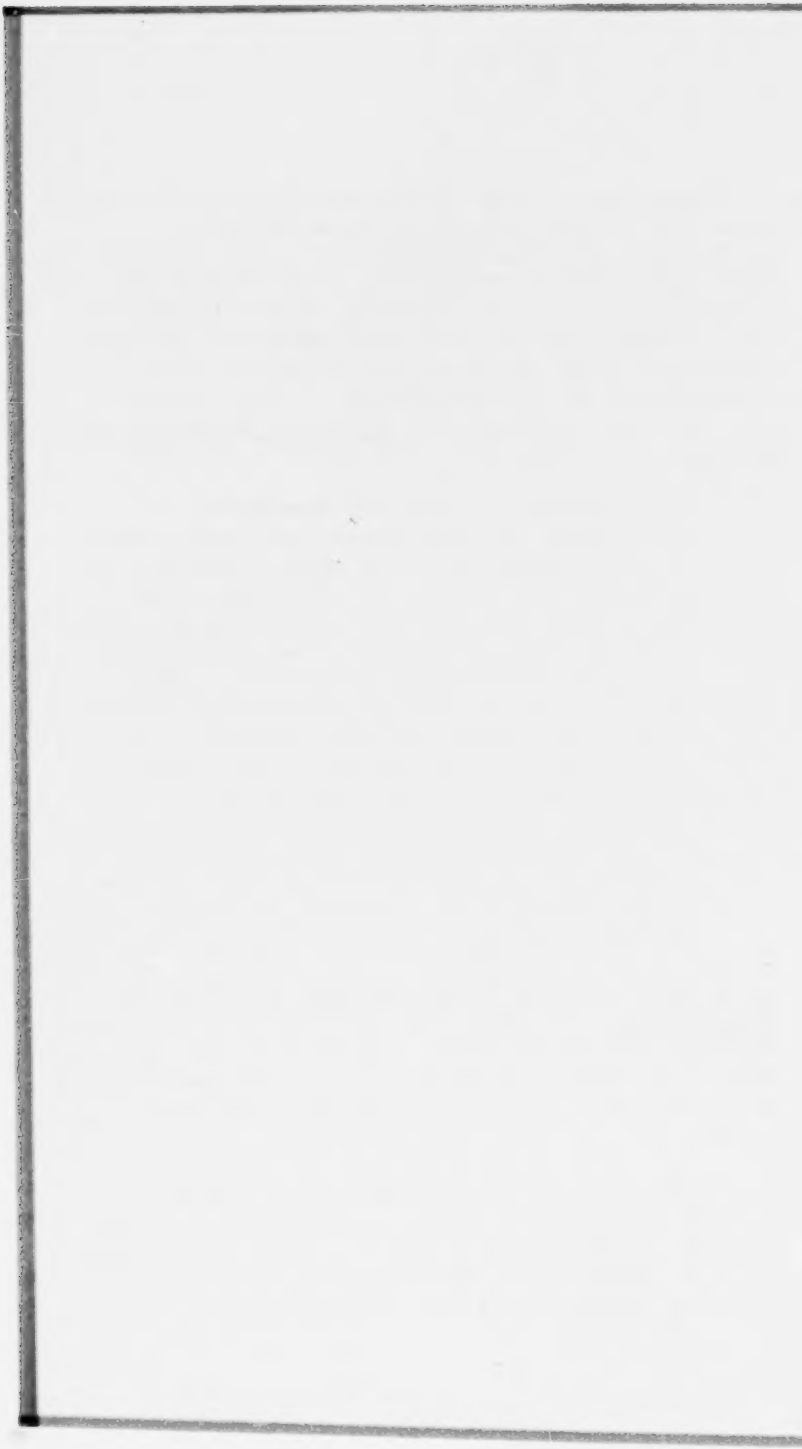
The Court emphasizes that the Statute can run against a local school district. The Statute of Limitations cannot run against the sovereign in Ohio, Board of Education of Springfield City School District vs Gibson, supra, at page 7. There is no reason nor purpose served in permitting the nuisance exception nor the Statute of Limitations to run against a local school board. There is a definite, unreasonable discrimination against suits in tort.

There are other tortured distinctions made for other inferior governmental agencies. For municipalities the Courts have made the distinction that there is liability for acts causing injuries which are classified as non-governmental and no liability for those actions which are classified as governmental. The Court set out the concept in City of Wooster vs Arbenz, 116 Ohio St. 281 (1927) at 283:

> This court is for the present committed to the doctrine that there is no liability of a municipality in actions for tort, if the function exercised by the municipality at the time of the injury to the plaintiff was a governmental function. The non-liability for governmental functions is placed on the ground that the state is sovereign, that the sovereign can't be sued without its consent, and that the municipality is the mere agent of the state and therefore cannot be sued unless the state gives its consent by legislation.

In a very recent case, Sears vs City of Cincinnati, 31 Ohio St. 2d 157 (1972), the Supreme Court of Ohio continued the distinction that a municipality can perform governmental and non-governmental functions:

> This Court concludes that where a municipality owns a hospital, thereby providing a service not essential to municipal government, there is no basis in logic for granting the



> municipality governmental immunity as to that hospital. In fact, logic dictates that a municipality owning a hospital . . . should be liable in tort for injuries sustained by its hospital patients due to the negligence of its employees or agents. (at page 161)

If the municipality is a sovereign, the State of Ohio for purposes of suit, how could it ever then function in a non-governmental, non-state, or non-protected capacity? The Supreme Court has said the manner in which the municipality behaves--as determined by the Court alone--will determine whether or not it is or is not the State of Ohio. The Courts, since the Board of Education is an inferior agency of the government, should use the same reasoning for a School Board. When a School Board is engaged in a non-governmental activity such as running an interscholastic football game, it should not be regarded as the State of Ohio. In Finch vs The Board of Education of City of Toledo, 30 Ohio St. 37 (1876), the Court at least framed the concept of liability for a School Board in terms of "official" duties:

> A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building . . . (emphasis added)

The distinction of governmental and non-governmental functions in terms of school boards has never been specifically made as it has for municipalities in Ohio. The reason for the distinction in terms of municipalities and the different treatment of similar inferior governmental agencies discriminates between classes with no compelling reason.

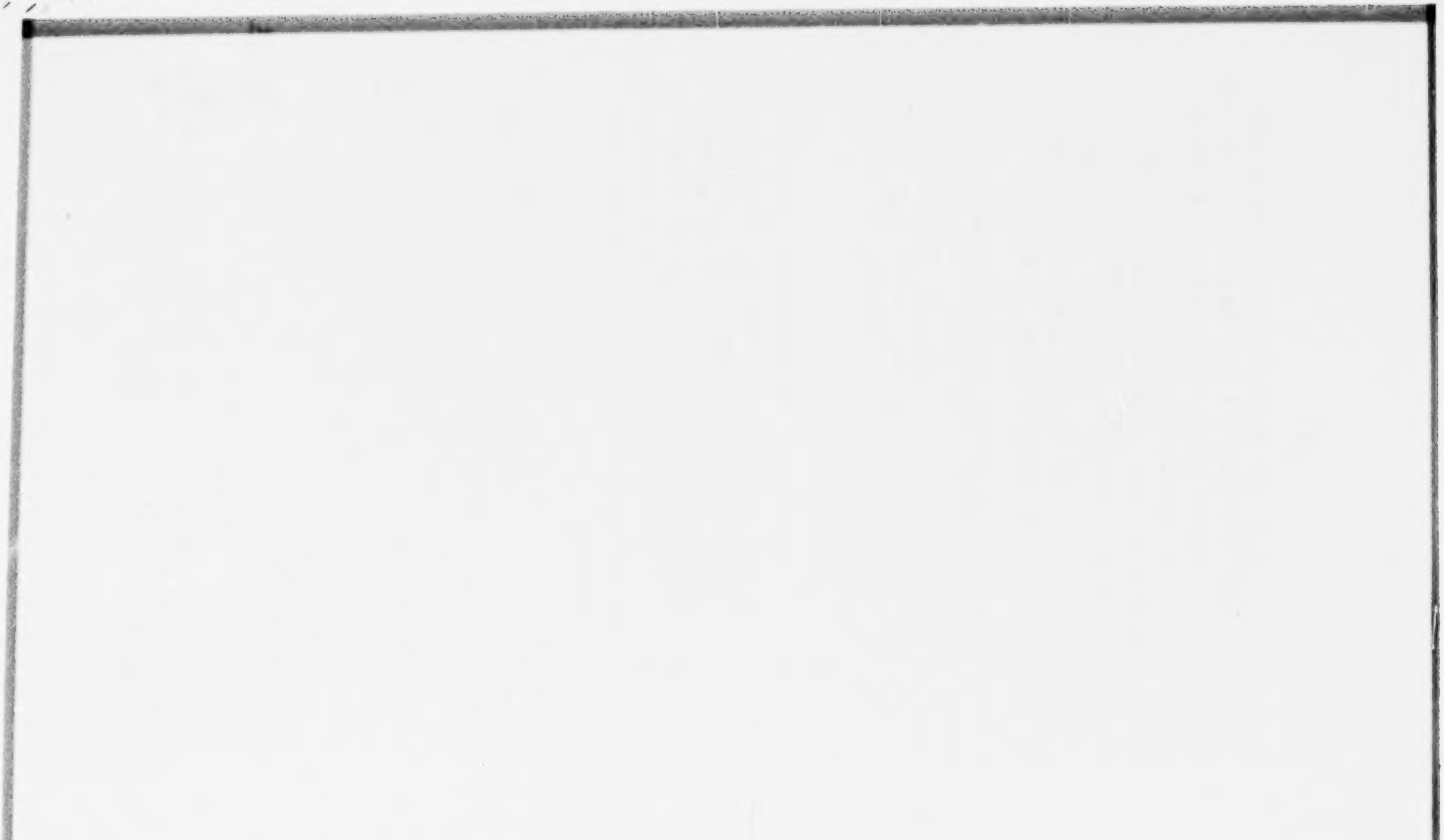
In Oxford Township vs Columbia, 38 Ohio St. 87 (1882) the Court determined that a township, even though holding lands for school purposes, was not the State of Ohio for the purposes of the Statute of Limitations:

> 2. Trustees of a township holding title to lands granted to them by the general government for school purposes, are not exempt from the operation of the Statute of Limitations, in an action prosecuted by them to recover possession of the premises.

Another distinction was made to deal with suits against townships, another of the inferior governmental agencies.

If citizens of the United States are treated differently under the law, there must be a reason for the difference; the question becomes whether or not the classification is rational, Rinaldi vs Yeager, 384 U.S. 305 (1966); Levy vs Louisiana, 391 U.S. 68 (1968); and Goesaert vs Cleary, 335 U.S. 464 (1948).

There is no rational basis for the complexity with which the issue of sovereign immunity has been handled in Ohio. If



the Boards of Education are the Sovereign, then no suits in injunction should be permitted, nor should suits on contracts permitted, nor should the Statute of Limitations be permitted to run. Why should a suit in tort be treated differently? What is the rationale? What are the standards for making the determination? There are none. None have ever been set out in opinions of the Courts. The distinctions are Court created. The Courts have further complicated the situation by another distinction for some inferior governmental agencies--governmental and non-governmental functions. If the distinction is made for municipalities, what is the rationale for not extending to school districts? The method by which distinctions are made in Ohio to determine whether or not a governmental agency will be treated as the State for the purposes of immunity violates Due Process and Equal Protection and should be overruled by this Court.

B. The extension of Sovereign immunity to agencies of the state of Ohio which are independent and inferior to the State is violative of Equal Protection and Due Process and should not have the protection of the Eleventh Amendment.

The United States Supreme Court has decided in at least one case that an inferior agency of the State may not be afforded the State's protection from suit. In Hopkins vs Clemson, 221 U.S. 636, 643 (1910) the Board of Trustees of Clemson University were not permitted to assume the immunity of the sovereign when damage was caused by an improperly constructed earthen dam under their control:

> The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's Citizens. To grant them such immunity would be to create a privileged class, free from liability for wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law.

There have been other opinions rendered by lower federal courts which have found that inferior agencies of the State may not assume the State's Sovereignty: Atkins vs City of Charlotte, 296 F. Supp. 1068 (D.C. North Carolina, 1969); Schultz vs Greater New Orleans Expressway Commission, 250 F. Supp. 89 (D.C. Louisiana, 1966); and Lowes vs Pennsylvania Turnpike

Commission, 125 F. Supp. 681 (D.C. Pennsylvania, 1954). There are also several federal court cases which have specifically ruled that a school district is not the same as the State for the purposes of sovereignty, Fabrizio and Martin, Inc. vs Board of Education Central School District No. 2 of Towns of Bedford, et al, 290 F. Supp. 945 (D.C. New York, 1968); and Aerojet-General Corp. vs Askew et al, 435 F. 2d 819 (5th Cir., 1971).

A School Board in Ohio is not without independent power. The members of the School Board are locally elected; the citizens decide whether to tax themselves in addition to funds provided by the state upon a levy brought by the School Board. The School Board's budget is not subject to approval by the State. The Schools are independent, inferior agencies.

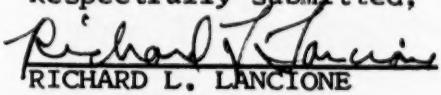
There is nothing which sets School Boards in Ohio apart from a municipality or a township. There is no reason to extend sovereign immunity to the School Boards, for suits in tort, when under similar circumstances the Courts would not extend sovereign immunity to a municipality or a township.

A School Board is not the State of Ohio and the extension of sovereignty to School Boards violates Due Process of law; therefore, this Court should overrule the extension of Sovereign immunity to School Boards in Ohio.

CONCLUSION

For the reasons set forth above, it is respectfully urged that the decision of the Ohio Supreme Court affirming the decision of the lower court should be summarily reversed and the classification of the Union Local School District as the State of Ohio for the purposes of immunity from suit be declared unconstitutional.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Jurisdictional Statement was sent by regular United States mail to Robert T. Baker, of the firm of MEANS, BICHIMER, BURKHOLDER & BAKER, CO., L. P. A., Attorney for Respondent, 50 West Broad Street, Columbus, Ohio 43215, on this 16th day of July, 1974.

Richard L. Lancione

RICHARD L. LANCIONE
Attorney for Petitioners

APPENDIX "A"

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

JOHN KUKLEVICH, ET AL,) OPINION.

PLAINTIFFS-APPELLANTS,)

-vs- Case No.

UNION LOCAL SCHOOL DISTRICT,) 1123.

DEFENDANT-APPELLEE.)

APPEARANCES.

Richard Lancione, Bellaire, Ohio, for Plaintiffs-Appellants.

Robert R. Baker, Columbus, Ohio, for Defendant-Appellee.

Hon. Joseph Donofrio,
Hon. John J. Lynch,
Hon. Joseph E. O'Neill, JJ.

Dated: August 7, 1973.

Grace Marten,
Court of Appeals Reporter,
Mahoning County Courthouse,
Youngstown, Ohio.

TOPIC INDEX.

Schools - School District - Tort liability - School District immune from suit, when.

DONOFRIO, J.

This is an appeal from the judgment of the Court of Common Pleas of Belmont County sustaining defendant's motion to dismiss plaintiff's complaint as to the defendant, Union Local School District.

Plaintiff-appellant, John Kuklevich, filed a complaint alleging negligence against the Union Local School District on April 4, 1972.

Plaintiff-appellant attended a football game at the Union Local Athletic Field, Morristown, Ohio, on November 6, 1970. The game was a regularly scheduled interscholastic contest between Union Local High School and Bridgeport High School. There was a charge for admission to the plaintiff-appellant and the public at large.

As the plaintiff-appellant was proceeding to find a seat in the bleachers gave way beneath him. As a result plaintiff-appellant was caught and wedged in the bleachers during the fall, left dangling in mid-air until he was assisted by other spectators. Plaintiff-appellant subsequently filed his complaint against the Union Local School District alleging negligence of the school district which caused plaintiff-appellant to sustain damages because of injuries received. It was to this complaint that the defendant, Union Local School District filed a motion to dismiss. Said motion was sustained, and is here now on appeal.

The question before this Court is whether or not the lower court erred in granting defendant's motion to dismiss

plaintiff-appellant's complaint on the ground of sovereign immunity.

The doctrine of governmental immunity of the Board of Education from tort liability has long been the established rule of Ohio.

The syllabus in Finch v. Board of Education of City of Toledo (1876), 30 Ohio St. 37, states:-

> "A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability."

Section 16 of Article I of the Ohio Constitution, as amended September 3, 1912, abolished the defense of governmental immunity and empowered the General Assembly to decide in what court and in what manner suits may be brought against the state. The second paragraph of Section 16 states:-

> "(Suits against the state). Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

To this date the legislature of the State of Ohio has not seen fit to pass laws permitting suits against the state.

48 Ohio Jurisprudence 2d, Part 2, 159 Schools, Section 247, states:-

> "School districts and boards of education are mere public agencies of the state established for the sole purpose of administering the state system of public education, and in the performance of their authorized duties or functions they take on a purely public or governmental character. They are therefore entitled to the same degree of tort immunity with which the state itself is clothed. There is no question in this respect as to whether they are exercising governmental or proprietary functions, as they exercise only governmental functions. Nor is there any distinction, with regard to their tort immunity, between duties or functions which are mandatory in character and those which are discretionary or optional. A board of education is not authorized to commit a tort or to be careless or negligent, and if a tort is committed or there is negligence, the board neither binds nor represents the school district in that respect. A board of education is not liable for the negligence of its officers, agents, or employees, and this exemption from liability applies even where the negligence consists in the nonperformance of a public or statutory duty which renders the negligent

persons criminally liable.

"By the well-settled and generally accepted adjudications of the courts, school districts are not liable to an action in damages for negligence in the performance of their public duties unless made so by a legislative enactment which clearly, in terms that are neither doubtful nor ambiguous, imports a legislative intention to abrogate or modify the rule of immunity. There is no common-law liability of a board of education for damages for its negligence or want of care and there is no statute creating such a liability for a tort to either person or property, either expressly or impliedly, by either a general or special provision. The statutes merely granting power to a board of education to sue or be sued, and granting it broad powers to contract and to acquire, use, and dispose of property for school purposes, do not affect its tort immunity."

As to the question of whether or not a board of education is a subdivision that would bring them outside of the area of governmental immunity to the state our Supreme Court in Board of Education v. Volk, 72 Ohio St. 469, at page 480, stated:-

"Boards of education for these school districts, are arms or agencies of

> the state for the promotion of education throughout the state, while 'municipal corporations are called into existence, either at the direct solicitation or by the free consent of the people who compose them.'"

In the case of Wayman v. Board of Education, Akron City School District, 5 Ohio St. 248, the court held that where a board of education creates or maintains a nuisance in such a manner that the property of another is endangered or damaged, such person may bring a suit in equity for an injunction to restrain such nuisance. Although the court permitted this action against the board, in the same case the court stated at page 251:-

> "* * * The doctrine of governmental immunity shields the board of education from liability in damages. * * *."

Thus the present state of the law in Ohio is that in the absence of a statute creating liability boards of education enjoy the protection of governmental immunity from liability in damages for its negligent acts or omissions to act.

Plaintiff-appellant forcibly and competently argues that Ohio should abandon its long established doctrine of governmental immunity, or in the alternative determine that inter-scholastic athletic events conducted by public schools are proprietary

functions, and, therefore, outside the protection of the doctrine.

As much as we may agree with the plaintiff-appellant's philosophical reasoning and even agree as to the fact that governmental immunity is an anachronism, unfair in its application to the citizens of Ohio.

As an appellate court we are bound by our Ohio Supreme Court and the general laws of the State of Ohio. It is, therefore, the duty of the Ohio Legislature or our Supreme Court by stare decisis to correct injustices and discriminations that may occur because of the doctrine of sovereign immunity.

We are bound by the general law as presently existing on this question. Our Ohio Supreme Court has recently ruled on the issue before us in the instant case in Krause v. State of Ohio, (1972), 31 Ohio St. 2d 132:-

> "1. The state of Ohio is not subject to suits in tort in the courts of this state without the consent of the General Assembly. (Raudabaugh v. State, 96 Ohio St. 513; Palumbo v. Indus. Comm., 140 Ohio St. 54; State, ex rel. Williams, v. Glander, 148 Ohio St. 188; and Wolf v. Ohio State Univ. Hospital, 170 Ohio St. 49, approved and followed.)
>
> "3. Section 16 of Article I of

the Ohio Constitution, as amended September 3, 1972, which provides that '* * * Suits may be brought against the state in such courts and in such manner, as may be provided by law,' is not self-executing, and statutory consent is a prerequisite to such suit. (Rudabaugh, Palumbo, Williams and Wolfe, supra, approved and followed).

"4. Section 16 Article I of the Ohio Constitution does not offend the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." (Syllabus 1, 3 and 4).

If the Krause case, supra, left a question as to its applicability to boards of education that court by footnote observed:-

"Because different considerations apply when the governmental body is a city, town, village, county, etc., the holding in the instant case may not be dispositive of the question of governmental immunity. Accordingly, we intimate no opinion on their amenability to suit." (Footnote 11 on page 146).

This has been cleared up in the case of Thacker v. Board of Trustees of the Ohio State University, 35 Ohio St. 2d 49, reported in July 2, 1973 issue of the Ohio Bar. In this case the court clarified the question of

whether or not liability may hinge on the nature of the activity giving rise to the alleged wrong. With reference to the Krause case, supra, the court stated at page 53:-

> "Appellants seek to debilitate Krause and Wolfe as precedents for the holdings below, contending that the issue of whether a governmental or proprietary function was being performed was not before the court in either case.
>
> "Such a position, however, overlooks one of the main points made in Krause. As set forth in the second paragraph of the syllabus in that case:
>
> "Section 16 of Article I of the Ohio Constitution, as amended September 3, 1912, abolished the defense of governmental immunity and empowered the General Assembly to decide in what courts and in what manner suits may be brought against the state.'
>
> "From that language, it should be readily apparent that questions concerning the governmental or proprietary nature of state activity were rendered irrelevant by Krause. That case held that the state and its instrumentalities do not have a defense of governmental immunity - that sovereign immunity exists in Ohio, insofar as suits against the state are

> concerned, only because the constitutional requirement for legislative consent in the field has not yet been satisfied. Since Krause, if not before, any inquiry directed to the nature of the function in which the state was engaged at the time of an alleged wrong has been meaningless."

This recent case of Thacker reiterates the doctrine of sovereign immunity as stated in syllabus I and 2:-

> "1. The state of Ohio is not subject to suits in tort in the courts of this state without the consent of the General Assembly. (First paragraph of the syllabus in Krause v. State, 31 Ohio St. 2d 132, approved and followed.)
>
> "2. The Ohio State University and The Ohio State University Hospitals are instrumentalities of the state of Ohio and as such are not suable in tort until the General Assembly of Ohio enacts a statute determining the courts and the manner in which such suits may be brought against the state. (Fourth paragraph of the syllabus in Wolf v. State, 170 Ohio St. 49, approved and followed.)"

We hold that the defendant, Union Local School District is an instrumentality of the State of Ohio, and as such is not suable in tort until the General Assembly of Ohio enacts a statute permitting such suit, or until the

Supreme Court of the State of Ohio by stare decisis declares its reasons for the perpetuation of the doctrine of sovereign immunity have vanished and modify our general laws judicially.

Plaintiff's assignment of error is overruled, and the judgment of the Common Pleas Court is affirmed.

Lynch, P. J., Concurs.
O'Neill, J., Concurs.
See Concurring Opinion.

APPROVED:

Joseph Donofrio
JUDGE.

LYNCH, P. J., CONCURRING.

If it made any difference as to whether sponsorship by defendant school district of an athletic contest in which spectators paid admission was exercising proprietary or governmental functions, I would hold that this is a proprietary function. Hoffman v. Scranton School District, 67 Pa. D. & C. 201; 33 ALR 3d 745.

However, the law in Ohio is that school districts and boards of education cannot be sued in a tort action regardless of whether they are exercising a proprietary function. Thacker v. Board of Trustees of the Ohio State University, 35 Ohio St. 2d 49; Shaw v. Board of Education, (App.) 17 Ohio Law Abstract 588, m. c. o. October 3, 1934; 48 Ohio Jurisprudence 2d (Part 2) 159-160, Schools, Section 247.

APPROVED:

John J. Lynch
PRESIDING JUDGE.

APPENDIX "B"

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO) 1974 TERM

City of Columbus) To wit: April 17, 1974

John Kuklevich et al., Appellants,	)	No. 73-819
	)	APPEAL FROM
	)	THE COURT
vs.	)	OF APPEALS
	)	
Union Local School District, Appellee.	)	FOR BELMONT COUNTY

This cause, here on appeal from the Court of Appeals for BELMONT County, was heard in the manner prescribed by law. On consideration thereof, the appeal is dismissed as having been improvidently allowed,

and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for BELMONT County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand
and the seal of the Court

this _____ day

of _____, 1974

_____Clerk

_____Deputy

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO) 1974 TERM
)
City of Columbus) To wit: April 17, 1974

John Kuklevich et al.,)
Appellants,) NO. 73-819
)
vs.)
)
Union Local School District,) MANDATE
Appellee.)

To the Honorable COMMON PLEAS COURT

Within and for the County of BELMONT, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed as having been improvidently allowed.

THOMAS L. STARTZMAN,
Clerk

_____ 19__

_____

_____Deputy

RECORD OF COSTS

Docket Fee $25.00
Paid by Lancione, Lancione & Lancione

IN THE COURT OF APPEALS
OF BELMONT COUNTY, OHIO
SEVENTH APPELLATE DISTRICT

John Kuklevich, et al	:	
	:	
Plaintiffs-Appellants	:	
	:	
-vs-	:	No. 1123
	:	
Union Local School District	:	
	:	
Defendant-Appellee	:	

JOURNAL ENTRY OF JUDGMENT
(AFFIRMANCE)

For the reasons stated in the decision of this Court herein on August 7, 1973, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County rendered in this case on July 21, 1972 sustaining Defendant Union Local School District's Motion to Dismiss, is hereby affirmed.

Joseph Donofrio

John J. Lynch

Joseph E. O'Neill

Judges

APPENDIX "C"

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment, United States Constitution:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States. Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear

to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor nay State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE I. SECTION 16 OF THE CONSTITUTION OF THE STATE OF OHIO

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

OHIO REVISED CODE

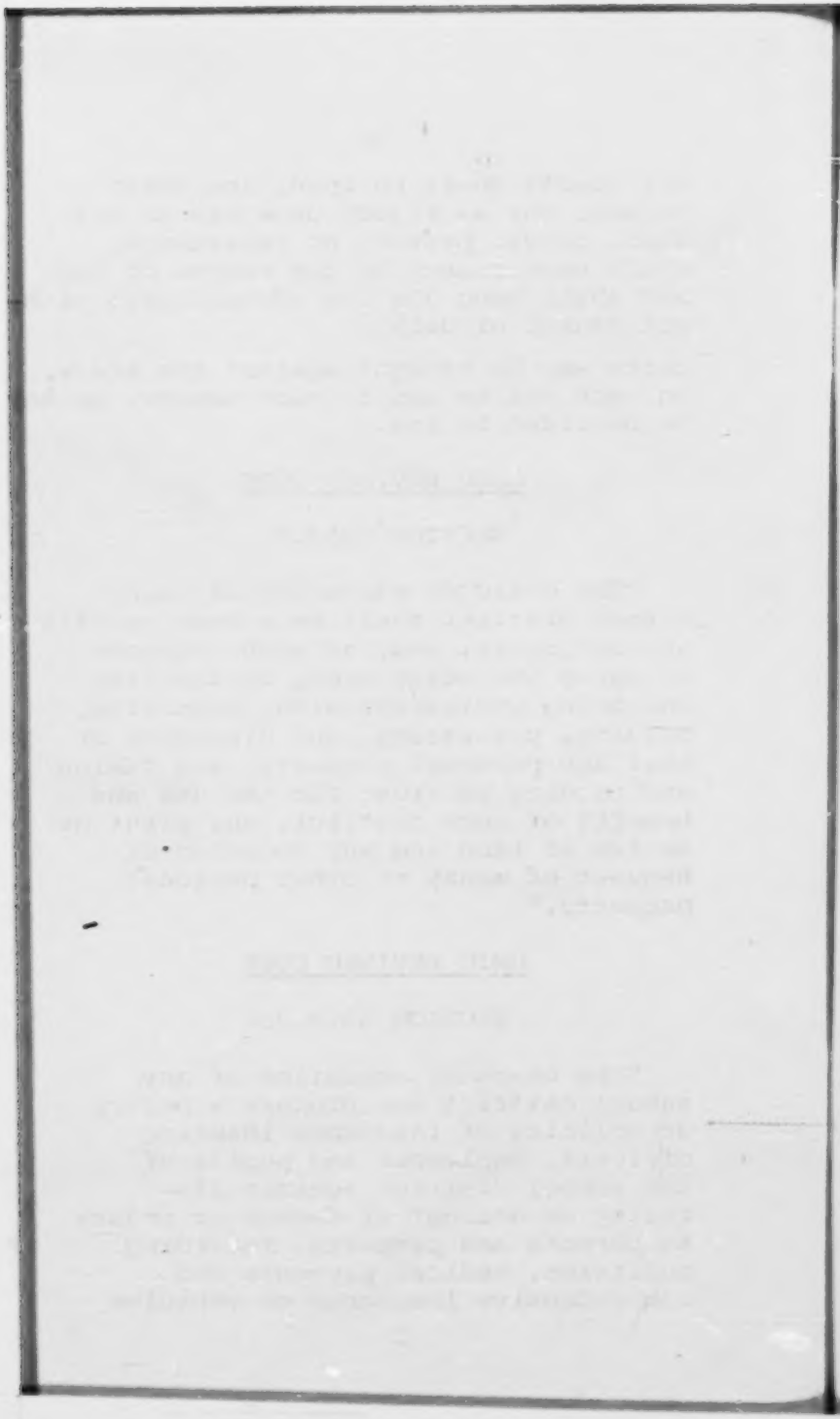
SECTION 3313.17

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."

OHIO REVISED CODE

SECTION 3313.201

"The board of education of any school district may procure a policy or policies of insurance insuring officers, employees and pupils of the school district against liability on account of damage or injury to persons and property, including collision, medical payments and comprehensive insurance on vehicles



operated under a course in drivers education certified by the state department of education and including liability on account of death or accident by wrongful act, occasioned by the operation of a motor vehicle, motor vehicles with auxiliary equipment, or all self-propelling equipment or trailers owned or operated by the school district. Whenever the board deems it necessary to procure such insurance, it shall adopt a resolution setting forth the amount of insurance to be purchased, the necessity thereof, together with a statement of the estimated premium cost thereon, and upon adoption of said resolution the board may purchase said insurance. The premiums for such insurance shall be paid out of the general fund."

APPENDIX "D"

COURT OF COMMON PLEAS
OF BELMONT COUNTY, OHIO

DOCKET ENTRY

John Kuklevich et al
Plaintiff

vs.

Union Local School District,
et al
Defendant

Case No.
26938
Journal Vol.
106 Page 37

Date of Entry
July 21, 1972

Motion of Defendant to dismiss the complaint as to Defendant, Union Local School District, be and is hereby sustained.

Approved:

Attorney for Plaintiff

Attorney for Defendant

W. Iddings
Judge